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Senate Unveils Amended BCRA, With Republican Legislative Repeal Effort On The Line

After a week-long recess and time spent back in their states, the Senate returned from the Fourth of July recess this week, with Republican leaders renewing their efforts to coalesce around a health care bill. On July 13, 2017, Senate Republican leadership released an [amended version](#) of their bill, the Better Care Reconciliation Act (BCRA), to repeal and replace critical portions of the Affordable Care Act (ACA). Included in the amended BCRA is a proposal put forth by Senator [Ted Cruz](#) (R-TX) that would allow insurers to sidestep key consumer protections in the ACA, including critical safeguards that ensure access to comprehensive care and treatment for people living with chronic illnesses and disabilities. Further, the bill retained the original draft's significant cuts to the Medicaid program¹ despite [moderate Republicans' concerns](#).

Senate Majority Leader [Mitch McConnell](#) (R-KY) [plans](#) to hold a key procedural vote to advance the bill early next week, with the ultimate goal of holding a substantive vote on the bill shortly thereafter. Under the procedural rules of the Senate and the rules governing the reconciliation process² Republicans are using to advance BCRA on a simple majority, McConnell can only afford to lose two Republican votes, both on the vote to proceed and the final vote. As a result, the fate of Republicans' legislative repeal effort now rests with a few key Senators at both ends of the Republican political spectrum, with both moderates and some hard right Senators still [uncommitted](#).

At this critical juncture, advocates should:

1. Understand the implications of the amended BCRA and its impact on access to care for vulnerable populations.
2. Continue to reinforce to their Senators that the BCRA's core provisions fundamentally alter Medicaid and undermine and dismantle the ACA's key consumer protections.
3. Focus outreach efforts on key Senate moderates who have not yet announced their position on the amended BCRA, including Senators [Dean Heller](#) (R-NV), [Lisa Murkowski](#) (R-AK), [Shelly Moore Capito](#) (R-WV), [Rob Portman](#) (R-OH), [Bill Cassidy](#) (R-LA), and [Jerry Moran](#) (R-KS).

¹ For a discussion of the BCRA as originally introduced by the Senate, please see our previous *Health Care in Motion* pieces [here](#) and [here](#).

² For a more in-depth discussion of the Senate procedure, please see our previous *Health Care in Motion* piece [here](#).



Health Care in Motion

The Freedom to Pay More; Amended BCRA Would Destabilize Marketplaces and Force More Costs on Vulnerable Populations

While the amended BCRA text includes some small changes aimed at winning the votes of holdouts on both ends of the party's ideological spectrum, the most notable amendment is the inclusion of a proposal put forth by Senator Ted Cruz, dubbed the "Consumer Freedom Option." This amendment would allow insurers to sell health plans that do not comply with the ACA's consumer protections, including key safeguards in the ACA that ensure access to comprehensive care and treatment for people living with chronic illnesses and disabilities.

Under the ACA, health plans sold outside of the law's Marketplaces (commonly referred to as "off-exchange plans") must comply with the ACA's private insurance market reforms. The Cruz amendment specifies that so long as an insurer offers at least one [gold](#), [silver](#), and benchmark-level plan "on-exchange," the insurer will also be permitted to offer off-exchange plans that do not comply with some of the ACA's key regulations. Qualifying insurers would be permitted to sell health insurance plans to consumers that do not comply with the ACA's critical consumer protections. This includes the obligation to cover the Essential Health Benefits (EHB) package, the requirement that plans offer a certain level of generosity in terms of financial coverage (actuarial value), and the requirement that enrollees' annual out-of-pocket spending is limited. Additionally, off-exchange plans would be permitted to charge enrollees more based on their health status, impose pre-existing condition exclusions, or choose to deny outright coverage to individuals living with pre-existing conditions.

This proposal will significantly undermine access to care for people living with chronic illnesses and disabilities. Allowing insurers to sell individual health insurance plans that are not regulated by the ACA's market reforms alongside ACA-compliant plans has the potential to destabilize the individual insurance Marketplaces. Off-exchange plans that are no longer required to comply with the ACA's regulations will most likely have lower premium costs, as these plans will cover fewer benefits and services and because insurers will be able to cherry-pick enrollees who will not incur significant claims and thus be more profitable.

However, these plans will be in direct competition for consumers with ACA-compliant plans offered on the Marketplaces. This would result in a substantial adverse selection problem. Healthier enrollees who do not expect to use their insurance heavily will likely be attracted to the lower premiums associated with the less generous off-exchange plans. However, those who rely on regular access to affordable, comprehensive services, such as those living with chronic conditions and disabilities, will remain reliant on plans that cover the benefits and services they need to manage their conditions. Further, these individuals would likely find themselves priced out of the off-exchange plans or denied coverage entirely.

The practical effect of the Cruz provision would be to essentially create two risk pools: one for healthier enrollees and one for those with significant health needs. While premiums would remain low in the former, premiums would likely skyrocket in the latter as insurers would not collect enough premium revenue to cover the cost of care for enrollees who incur substantial health claims due to their pre-existing conditions. The result would be that individuals living with chronic illnesses and disabilities will be forced to either pay more for the treatment and care they need, or forego these services entirely.

Health Care in Motion

Other Changes Do Not Mitigate the BCRA's Harsh Impacts on Low-Income Consumers Living with Chronic Conditions

While the amended BCRA also includes proposals aimed at garnering votes from both moderate and more conservative Republican Senators, many of the bill's core provisions that will negatively impact access to care, particularly for low-income vulnerable populations, remain unchanged. Among other small tweaks, the BCRA would allocate an additional \$70 billion in funding for market stabilization efforts and \$45 billion for state programs providing substance use disorder treatment and recovery. While the additional funding earmarked for market stabilization efforts, such as state reinsurance programs, may help to slightly reduce premiums, it is unlikely that it would be sufficient to offset the deep cuts to financial assistance for health care consumers, as the BCRA would eliminate the ACA's cost-sharing reductions and substantially decrease the generosity of the ACA's premium subsidies. Similarly, a small, one-time infusion of funds is no replacement for comprehensive care and treatment, as those struggling with addiction need access to care and other wrap-around services to address other health issues that develop as a result of their substance use disorder.

The amended BCRA would also place greater reliance on health savings accounts (HSAs). HSAs are special savings accounts in which any contributions are tax deductible, and interest accrued on the account is tax free. The purpose of an HSA is to help individuals finance the cost of care associated with [high-deductible health plans](#). The BCRA as originally introduced would allow individuals to contribute up to the current out-of-pocket maximum limits to their HSAs (\$6,550 for individuals and \$13,100 for families). Currently, individuals may not use funds in their HSA to pay premium costs. The BCRA as amended would, for the first time, allow individuals to use their HSAs to pay for premiums, a proposal often sought by conservatives.

HSAs can be beneficial for middle- and higher-income individuals who have the funds to contribute to their accounts and a high enough tax bill to take advantage of the deductions. Unfortunately, HSAs are not useful for lower-income Americans who would struggle to fund these accounts and would not realize a tax benefit. Expanded HSAs would be an inadequate substitute for the [8.7 million Americans](#) who currently rely on the ACA's premium subsidies to afford their health care coverage. Further, high-deductible health plans are often inappropriate for those living with chronic illnesses and disabilities, as the up-front cost associated with accessing treatment would be a significant financial barrier to care for these individuals.

Senate leadership is also touting small revisions to the bill's Medicaid changes that they say improve the bill. The amended BCRA includes a provision that will limit the severity of Medicaid caps in states that experience public health emergencies. This is a drop in the bucket that does not address the major problem with fundamentally shifting the Medicaid program from an open entitlement to a capped system. As the BCRA ends the enhanced financial support for the Medicaid expansion and severely limits overall federal financial support for Medicaid, states will still find themselves unable to continue their programs in their current form and will be forced to limit enrollment and benefits to respond to this financial shortfall.

An Uncertain Path Forward Presents an Opportunity for Advocates

The amended BCRA received a lukewarm reception in the Senate and from health insurers. Even before the amended text was released, two organizations representing the nation's largest health insurers, the Blue Cross Blue Shield Association and

Health Care in Motion

America's Health Insurance Plans, both [panned](#) the amendment championed by Senator Cruz, stating that it would create instability, increase premiums, and would not preserve protections for those living with pre-existing conditions.

Senators [Rand Paul](#) (R-KY) and [Susan Collins](#) (R-ME) have already [indicated](#) that they both plan to vote no on the key procedural vote next week that would allow leadership to bring the bill to the floor for a vote. As Republicans need at least 50 votes in order to proceed and because no Democrats are expected to vote yes on this key procedural vote, a single additional no vote has the potential to stop the BCRA in its tracks. As such, advocates who oppose the bill should focus on contacting their Senators, particularly Senate moderates such as Senators [Dean Heller](#) (R-NV), [Lisa Murkowski](#) (R-AK), [Shelly Moore Capito](#) (R-WV), [Rob Portman](#) (R-OH), [Bill Cassidy](#) (R-LA), and [Jerry Moran](#) (R-KS) that have previously expressed reservations about the BCRA. Advocates should also consider educating their [Senators](#) on the importance of continued federal financial support for Medicaid, robust subsidies, and strong consumer protections on access to care for people living with chronic illnesses and disabilities.

The Senators that remain uncommitted may push off final decision making until after the amended text is scored, but potential controversy brews there as well. While the Congressional Budget Office (CBO), the nonpartisan agency charged with providing budgetary and economic information to Congress, is in the process of scoring the revised BCRA, Senate Republicans have [indicated](#) they may proceed on the bill based on analysis by the Department of Health and Human Services (HHS) and/or the Office of Management and Budget (OMB). Both HHS and OMB are headed by partisan leaders appointed by the Trump Administration, and can be expected to issue a favorable score.

Given the make-or-break implications of any one moderate Senator's opposition to the BCRA, stakeholders should understand that this is a critical time for advocacy. Advocates should urge Moderates to reject any partisan analytics from HHS and OMB and insist upon a full CBO report before any action is taken on the bill. Further, advocates should reach out to moderates and urge them to consider the devastating consequences that the BCRA would have on access to care. The Republican repeal effort is at a critical juncture and stakeholders should ensure that their voices are heard.

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